

18-990
TAX TYPE: INCOME TAX
TAX YEAR: 2020
DATE SIGNED: 8/2/2021
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION	
TAXPAYER-1 and TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 18-990 Account No. ##### Tax Type: Income Tax Tax Years: 2013, 2014 and 2015 Judge: Phan

Presiding:

Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1
For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 22, 2021, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners (“Taxpayers”) are appealing audit deficiencies issued by Respondent (“Division”) of Utah individual income taxes, penalties and interest for the tax years 2013 through 2015.

2. The Division issued Notices of Deficiency and Estimated Income Tax for each tax year at issue on April 24, 2018.¹ The Taxpayers timely appealed the notices under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

3. No penalties were issued with the audit. The amount of the audit tax deficiencies and the interest accrued thereon as listed on the audit notices were as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u> ²
2013	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2014	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

4. The Division had issued its audit assessments based on information the Division had received from the Internal Revenue Service that indicated the IRS had audited the Taxpayers and increased the Taxpayers' federal adjusted gross income for each audit year. The Division had increased the Taxpayers' federal adjusted gross income from the amount the Taxpayers had claimed on their Utah individual income tax returns, to the amount reported by the Internal Revenue Service on the Account Transcript for the Taxpayers after the IRS had finished its audit. The amount of federal adjusted gross income the Taxpayers had claimed on their Utah returns and the amount indicated on the IRS Account Transcript are as follows:³

2013	\$\$\$\$\$	\$\$\$\$\$
2014	\$\$\$\$\$	\$\$\$\$\$
2015	\$\$\$\$\$	\$\$\$\$\$

5. The 2013 IRS Account Transcripts, which the Division had requested on April 15, 2021, shows a “tax return filed” on May 19, 2014, an “examination of tax return” on August 29, 2014 and “additional tax assessed by examination” occurring on June 26, 2017 in the amount of \$\$\$\$\$ in additional tax. The 2013 account also shows penalties and interest assessed in addition to the additional federal tax amount and an amount due to the IRS of \$\$\$\$\$.

6. The 2014 IRS Account Transcript, which the Division had also requested on April 15, 2021, shows a “tax return filed” on July 7, 2015, an “examination of tax return” on August 19, 2016 and “additional tax assessed by examination” occurring on June 26, 2017 in the amount of \$\$\$\$\$ in additional tax. The 2014 Account Transcript shows penalties and interest assessed in addition to the additional federal tax amount and a balance due to the IRS of \$\$\$\$\$.

¹ Respondent’s Exhibit 1.

² Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on any unpaid balance.

³ Respondent’s Exhibits 1 & 2.

7. The 2015 IRS Account Transcripts, which the Division also had requested on April 15, 2021, shows a “tax return filed” on April 4, 2016, an “examination of tax return” on August 19, 2016 and “additional tax assessed by examination” occurring on June 26, 2017 in the amount of \$\$\$\$\$. The 2015 Account Transcript also shows penalties and interest assessed in addition to the additional federal tax amount and a balance due to the IRS of \$\$\$\$.

8. The Division’s audits had been issued on April 24, 2018, and the Taxpayers had filed their appeal of the audits on May 9, 2018. A number of Telephone Status Conferences were scheduled and held with the Taxpayers beginning with the first one on October 1, 2018, to give the Taxpayers time to work with the IRS regarding the federal audit.

9. However, by December 2019, based on the IRS Account Transcripts it appeared the IRS had closed its review of the Taxpayers’ account without reducing the amount the IRS had concluded to be the Taxpayers’ federal adjusted gross income. For tax years 2013 and 2014, the IRS Account Transcripts showed “Closed examination of tax returns” on December 16, 2019. For tax year 2015 the IRS Account Transcript showed “Notice Issued CP 0091” on November 11, 2019.⁴ These transcripts continued to show the same amount of federal adjusted gross income as the Division had found in the Utah audit deficiencies.⁵

10. The matter was then scheduled for an Initial Hearing, with the hearing originally scheduled on January 13, 2020, for the Taxpayers to present their evidence regarding the amount they claimed to be the correct federal adjusted gross income directly to the Utah State Tax Commission. The Taxpayers asked for a continuance. The Initial Hearing was rescheduled for May 14, 2020, and the Taxpayers again asked for a continuance. The Initial Hearing was rescheduled again for the final time on October 22, 2020. The Taxpayers again asked for a continuance, but this was denied. The Taxpayers waived the Initial Hearing and requested a Formal Hearing.⁶ The Formal Hearing is the matter now before the Tax Commission, held on April 22, 2021, almost three-years after the audit was issued.

11. At the Formal Hearing the Taxpayer testified that he had not been able to get the IRS to review his account or reconsider his audit. He argued that he should have gotten a hearing with the IRS, but he was never able to get a hearing with the IRS. He testified that he did not make any money in tax years 2013 through 2015 and he stated, “The IRS was just harassing me because under Obama the IRS harassed conservatives.” He also stated that he is now 75 years old and both he and his wife still have to work. He testified that he did not have the documentation to support his claim because his accountant

⁴ Respondent’s Exhibit 2.

⁵ Respondent’s Exhibit 1.

⁶ Information from the Calendar History in this Appeal.

had a stroke and could no longer talk. He said he sent a letter to the IRS in December 2019 and then again a few months prior to the hearing, but has gotten no response. It was his statement that the IRS had included all of his deposits in his accounts in its audit, but had not deducted for cost of goods. It was his contention that he was barely making any money during those years. It was his argument that as “a citizen” he had “the right to an appeal with the IRS.” It was his contention that he still wanted to appeal the audits to the IRS.

12. The Taxpayers did not provide any evidence or documentation at the Formal Hearing to establish that the IRS audit was incorrect. He did not provide receipts or documentation of what had been his cost of goods or other expenses or deductions. There was no documentary evidence to establish that the IRS audits were wrong, or support a different amount of federal adjusted gross income for each year than what had been concluded by the IRS in its audits of the Taxpayers.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code §59-10-104(1)(2015)⁷ as follows:

. . . . a tax is imposed on the state taxable income of a resident individual as provided in this section

The term “state taxable income” is defined in Utah Code §59-10-103(1)(w)(2016), below in pertinent part:

- (w) “Taxable income” or “state taxable income”:
- (x) subject to Section 59-10-1404.5, for a resident individual, means the resident individual’s adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115...

“Adjusted gross income” is defined in Utah Code §59-10-103(1)(a)(2016), as follows in relevant part:

- “Adjusted gross income”:
- (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code...

Utah Code §59-1-1417 provides that the burden of proof is upon the petitioner in proceedings before the Commission:

⁷ For ease of reference, this decision cites to the Utah Code in effect for 2015. However, there were no substantive law changes from 2013-2015 in regards to the Taxpayers’ arguments herein.

In a proceeding before the commission, the burden of proof is on the petitioner. .

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of interest, as follows in pertinent part:

- (1) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

CONCLUSIONS OF LAW

1. “State taxable income” is defined at Utah Code Subsection 59-10-103(1) as “the resident individual’s adjusted gross income” with some additions and subtractions under Sections 59-10-114 and 59-10-115. “Adjusted gross income” for a resident or nonresident individual, “is as defined in Section 62, Internal Revenue Code.” See Subsection 59-10-103(1)(a). This language makes it clear that ultimately the state taxable income is based on the federal definition of federal adjusted gross income. The Utah State Tax Commission does give deference to the IRS on the determination of federal adjusted gross income in situations where the IRS audited a taxpayer’s federal return and made some adjustment to the federal adjusted gross income.⁸

2. Upon reviewing the evidence submitted in this hearing, the Division’s Utah audit deficiencies match federal adjusted gross income that the IRS has reported on the IRS’s Account Transcript. The Tax Commission has, in limited circumstances, made a determination independent from what is shown on the IRS Account Transcripts regarding a person’s federal adjusted gross income.⁹ Generally, this occurs if the person had failed to appeal an IRS audit administratively or with amended

⁸ See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal Nos. 12-1345* (December 12, 2016) and *No. 06-1408* (Nov. 5, 2007). See also *Utah State Tax Commission Appeal Nos. 14-580, 13-1292, 12-2967, 12-2963, 11-2709 and 08-1482*. These and other Tax Commission decisions are available in a redacted format at tax.utah.gov/commission-office/decisions.

⁹ The Tax Commission has considered whether to make a finding independent of what the Internal Revenue Service had shown on its system and in some cases found evidence to support the taxpayer’s claim and in some cases found evidence insufficient. See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 07-0365* (2/28/10); *Initial Hearing Orders Appeal No. 17-1230* (4/30/2019), *Appeal No. 12-2967* (3/31/2014), *Appeal No. 07-1036* (7/17/08); *Orders Appeal No. 06-1408* (11/5/07), *Appeal No. 03-0510* (1/1/05) and *Appeal No. 03-0586* (5/24/04).

filings, due to failing to meet deadlines or other procedural issues, and if it was clear that the IRS determination was in error.

3. In this matter, based on Utah law, specifically Utah Code §59-1-1417, the burden of proof is on the Taxpayers, not the Division. Therefore, the Taxpayers need to provide evidence that the audit assessment is incorrect. The Taxpayers argued in this matter that they were entitled to a hearing at the IRS and never got a hearing, but they did not present evidence in the hearing before the Tax Commission to establish the correct amount of their federal adjusted gross income for each tax year at issue. Therefore, the Tax Commission has no basis upon which to determine a different amount of federal adjusted gross income, from what had been determined by the IRS.

4. No penalties were assessed with the audit. Interest has accrued on the audit tax deficiency from the time the Utah individual income taxes were due for each tax year. Although the Tax Commission does have discretion to waive penalties and interest pursuant to Utah Code Ann. §59-1-401(14) “upon reasonable cause shown,” grounds for waiving interest are limited to where the taxpayer proves that “the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” See Utah Admin. Rule R861-1A-42. There was no basis presented by the Taxpayers for waiver of interest.

The Taxpayers’ appeal of the Utah audit tax deficiencies and the interest accrued thereon for tax years 2013 through 2015 should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Utah individual income tax audit deficiencies and the interest accrued thereon issued against the Taxpayers for the tax years 2013 through 2015. The Taxpayers’ appeal is denied. It is so ordered.

DATED this _____ day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell

Commissioner

Notice of Appeal Rights and Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be assessed. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.